

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
SCOTT SCHNALL, P.E.,

Plaintiff,

17 CV 2412 (LDH)(LB)

-against-

THE CITY OF NEW YORK, DEPARTMENT OF
BUILDINGS, RICK D. CHANDLER, in his capacity as
Commissioner of the Department of Buildings, ADAM
AARON ARCHITECT, P.C., and ADAM WAPNIAK,

Defendants.
----- X

SETTLEMENT AGREEMENT

WHEREAS, plaintiff, Scott Schnall, P.E. (hereinafter "plaintiff"), commenced this action on or about April 21, 2017, seeking damages for the purported violation of his rights under the United States Constitution; and

WHEREAS, plaintiff also commenced a related hybrid Article 78 proceeding/declaratory judgment action in New York State Court, along with plaintiffs Robert Denbo, James Greenfield, Charles A. Quimby, Peter Arbeeny and Adam Rothkrug (the "other plaintiffs") seeking to reverse the determination of the New York City Department of Buildings ("DOB") that revoked plaintiff's filing privileges as a professional engineer, entitled Schnall, et al. v. The City of New York, Department of Buildings, et al. (Kings County Index No. 506129/2017) on or about March 29, 2017; and

WHEREAS, plaintiff settled the instant action with co-defendants Adam Aaron Architect, P.C. and Adam Wapniak on or about August 1, 2017;

WHEREAS, defendants City of New York, Department of Buildings and Rick D. Chandler interposed their answer in this action on or about September 15, 2017; and

WHEREAS, the related hybrid Article 78 proceeding/declaratory judgment action was amended by an Amended Complaint on or about February 20, 2018 which only sought Article 78 review; and

WHEREAS, plaintiff also commenced another related action in New York State Court alleging defamation entitled Schnall v. New York City Department of Buildings (Kings County Index No. 504474/2018), on or about March 3, 2018;¹ and

WHEREAS, municipal defendants deny any and all liability arising out of the claims in this action or in the related State Court actions; and

WHEREAS, the parties in this action and the related State Court actions now desire to resolve all claims asserted in all three lawsuits against municipal defendants without further proceedings and without admitting any fault or liability;

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. The City of New York, on behalf of the municipal defendants, shall pay plaintiff one hundred and twenty-five thousand dollars (\$125,000.00), in full settlement of all claims against all municipal defendants, inclusive of attorneys' fees, costs and expenses ("the settlement amount").

¹ Schnall, et al. v. The City of New York, Department of Buildings, et al (Kings County Index No. 506129/2017) and Schnall v. New York City Department of Buildings (Kings County Index No. 504474/2018) are hereinafter referred to as the "related State Court actions." Defendants City of New York, Department of Buildings and Rick D. Chandler, together with the Defendants in the related State Court actions, are collectively referred to as "municipal defendants."

2. Payment of the settlement amount shall be made by mailing a check made payable to "Rosenberg & Estis, P.C. as attorneys for plaintiff Scott Schnall, P.E." in the amount of one hundred and twenty-five thousand dollars (\$125,000.00) to plaintiff's counsel, Brett Theis, Esq., at Rosenberg & Estis, P.C., 733 Third Avenue, New York, New York 10017.

3. The City of New York shall make payment of the settlement amount within 90 days of receipt of the following: 1) a copy of this agreement executed by plaintiff's counsel; 2) a Stipulation and Order of Discontinuance executed by plaintiff's counsel in this Action in the form annexed hereto as Exhibit A; 3) a Stipulation and Order of Discontinuance executed by plaintiffs' counsel in Schnall, et al. v. The City of New York, Department of Buildings, et al. (Kings County Index No. 506129/2017) in the form annexed hereto as Exhibit B; 4) a Stipulation and Order of Discontinuance executed by plaintiff's counsel in Schnall v. New York City Department of Buildings (Kings County Index No. 504474/2018) in the form annexed hereto as Exhibit C; 5) a release executed by plaintiff in the form annexed hereto as Exhibit D; and 6) an Affidavit of No Liens executed by plaintiff in the form annexed hereto as Exhibit E.

4. In consideration of the relief detailed in paragraphs 1 and 2 above, this action and the two related State Court actions shall be settled and dismissed against municipal defendants with prejudice and without attorneys' fees, costs or expenses.

5. Additionally, in consideration of the relief detailed in paragraphs 1 and 2 above, plaintiff agrees 1) never to submit an application, plan, removal of objections or other document to the New York City Department of Buildings; 2) never to permit anyone to submit an application, plan, removal of objections or other document that bears plaintiff's signature and/or seal to the New York City Department of Buildings; and 3) never to appear pursuant to

any application, plan, removal of objections or other document before the New York City Department of Buildings, including, but not limited to, acting as a "Filing Representative" or "Applicant of Record" on any application, plan, removal of objections or other document before the New York City Department of Buildings. Notwithstanding the foregoing, plaintiff can appear on an application, plan, removal of objections or other document, solely as the "Owner" of a property.

6. Upon payment of the settlement amount, all plaintiffs shall be deemed to have released all municipal defendants, the City of New York, and all departments, officials, employees, representatives and agents of the City of New York, past and present, in their individual or official capacities, from each and every claim and right to damages arising from the acts and omissions complained of in the Complaint or in the related State Court actions.

7. This agreement is not to be construed as an admission that the municipal defendants, the City of New York, or any departments, officials, employees, representatives and agents of the City, past and present, in their individual or official capacities, violated any constitutional rights, violated an applicable law, rule or regulation, or are in any way liable for the claims asserted in this action or the related State Court actions or responsible for any of the alleged injuries asserted in this action or the related State Court actions.

8. This agreement, and the settlement it represents, shall not be used by any party, and shall not be admissible in any other proceeding, litigation or settlement negotiation except insofar as filing Stipulations of Discontinuances executed pursuant to paragraph "3" above in the related State Court actions.

9. This Stipulation contains all the terms and conditions agreed upon by the parties, and no oral agreement entered into at any time nor any written agreement entered into

prior to the execution of this Stipulation regarding the subject matter of the instant action shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.


10. The parties have reviewed and revised this Stipulation, and any rule of construction, by which any ambiguities are to be resolved against the drafting party, shall not be applied in the interpretation of this Stipulation.

11. This Stipulation may be executed in counterparts, and facsimile execution of this Stipulation by the undersigned shall constitute original signatures for filing with the court.

Dated: New York, New York
October 30th, 2018

ROSENBERG & ESTIS, P.C.
*Attorneys for Plaintiff in this action and for
Plaintiffs in the related State Court actions*
733 Third Avenue
New York, NY 10017
Tel: (212) 867-6000
btheis@rosenbergestis.com

By:


Brett B. Theis, Esq.

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Municipal Defendants
100 Church Street
New York, New York 10007
Tel: (212) 356-2187
pkoplik@law.nyc.gov

By:


Pamela A. Koplik
Assistant Corporation Counsel

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
SCOTT SCHNALL, P.E.,

Plaintiff,

17 CV 2412 (LDH)(LB)

-against-

THE CITY OF NEW YORK, DEPARTMENT OF
BUILDINGS, RICK D. CHANDLER, in his capacity as
Commissioner of the Department of Buildings, ADAM
AARON ARCHITECT, P.C., and ADAM WAPNIAK,

Defendants.
----- X

STIPULATION AND ORDER OF DISCONTINUANCE

This action is hereby dismissed with prejudice, with each party to bear its own
attorneys' fees, costs and expenses.

Dated: New York, New York
October 30, 2018

ROSENBERG & ESTIS, P.C.
Attorneys for Plaintiff
733 Third Avenue
New York, NY 10017
Tel: (212) 867-6000
btheis@rosenbergestis.com

By: 

Brett B. Theis, Esq.

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Municipal Defendants
100 Church Street
New York, New York 10007
Tel: (212) 356-2187
pkoplik@law.nyc.gov

By: 

Pamela A. Koplik
Assistant Corporation Counsel

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- X
SCOTT SCHNALL, P.E., ROBERT DENBO, JAMES
GREENFIELD, CHARLES A. QUIMBY, PETER
ARBEENY, and ADAM W. ROTHKRUG

Plaintiffs-Petitioners,

-against-

THE CITY OF NEW YORK, THE DEPARTMENT OF
BUILDINGS, and RICK D. CHANDLER, in his capacity
as Commissioner of the Department of Buildings,

Defendants-Respondents.
----- X

**STIPULATION OF
DISCONTINUANCE WITH
PREJUDICE**

Index No. 506129/2017

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys for all the parties to the above-entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, this action is hereby discontinued with prejudice and with each party to bear its own costs, expenses and attorneys' fees.

IT IS FURTHER STIPULATED AND AGREED, that this stipulation may be signed in counterparts and that facsimile signatures on this stipulation have the same force and effect as the original. This stipulation may be filed without further notice with the Clerk of the Court.

Dated: New York, New York
October 30, 2018

ROSENBERG & ESTIS, P.C.
Attorneys for Plaintiffs-Petitioners
733 Third Avenue
New York, NY 10017
Tel: (212) 867-6000
btheis@rosenbergestis.com

By: 
Brett B. Theis, Esq.

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendants-Respondents
100 Church Street
New York, New York 10007
Tel: (212) 356-2187
pkoplik@law.nyc.gov

By: 
Pamela A. Koplik
Assistant Corporation Counsel

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- X
SCOTT SCHNALL

Plaintiff,

-against-

**STIPULATION OF
DISCONTINUANCE WITH
PREJUDICE**

NEW YORK CITY DEPARTMENT OF BUILDINGS

Defendant. Index No. 504474/2018
----- X

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys for all the parties to the above-entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, this action is hereby discontinued with prejudice and with each party to bear its own costs, expenses and attorneys' fees.

IT IS FURTHER STIPULATED AND AGREED, that this stipulation may be signed in counterparts and that facsimile signatures on this stipulation have the same force and effect as the original. This stipulation may be filed without further notice with the Clerk of the Court.

Dated: New York, New York
October 2, 2018

ROSENBERG & ESTIS, P.C.
Attorneys for Plaintiff
733 Third Avenue
New York, NY 10017
Tel: (212) 867-6000
btheis@rosenbergestis.com

By: 

Brett B. Theis, Esq.

ZACHARY W. CARTER
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City of New York
Attorney for Defendant
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Tel: (212) 756-2215
alalio@law.nyc.gov

By: 

Annette M. Lalic
Assistant Corporation Counsel

EXHIBIT D

RELEASE

I, Scott Schnall, P.E., ("the Releasor"), conditioned upon the payment of \$125,000 to me in the actions entitled Schnall v. City of New York et al., 17 CV 2412 (LDH)(LB)(E.D.N.Y.)(the "Federal Action"), Schnall, et al. v. The City of New York, Department of Buildings, et al. (Kings County Index No. 506129/2017), and Schnall v. New York City Department of Buildings (Kings County Index No. 504474/2018) (collectively, "the Actions") by the City of New York in accordance with the terms and conditions set forth in the Settlement Agreement dated October ^{30th}, 2018 entered into in the Federal Action, do for myself, remise, remit, release and forever discharge defendant City of New York, and all departments, officials, employees, representatives and agents of defendant City of New York, past and present, defendant New York City Department of Buildings, and defendant Rick D. Chandler ("the Releasees"), of and from any and all actions, causes of action, suits, debts, sums of money, damages, claims and demands, in law and equity, which against the Releasees, the Releasor ever had, now has or which his heirs, executors, or administrators hereafter can, shall or may have regarding the acts practices, policies and events complained of in the Actions to date.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ^{30th} day of October, 2018.


SCOTT SCHNALL, P.E.,

ACKNOWLEDGEMENT

STATE OF NEW YORK)
) .SS.:
COUNTY OF NEW YORK)

On this ^{30th} day of October, 2018, before me personally came SCOTT SCHNALL, P.E., to me known and known to me to be the person described in the foregoing release and who duly acknowledged to me that he executed the same.

BRETT BOYDELL THEIS
Notary Public, State of New York
No. 02TH6266132
Qualified in New York County
Commission Expires July 23, 2020

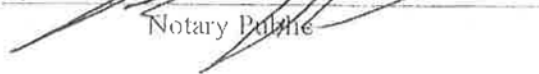

Notary Public

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

SCOTT SCHNALL, P.E.,

Plaintiff,

-against-

THE CITY OF NEW YORK, DEPARTMENT OF
BUILDINGS, RICK D. CHANDLER, in his capacity as
Commissioner of the Department of Buildings, ADAM
AARON ARCHITECT, P.C., and ADAM WAPNIAK,

Defendants.

----- X

STATE OF NEW YORK)
): SS.
COUNTY OF NEW YORK)

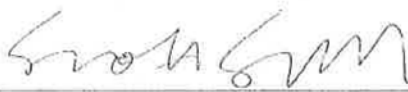
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LIENS**

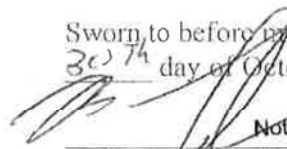
17 CV 2412 (LDH)(LB)

SCOTT SCHNALL, P.E., being duly sworn, deposes and says:

1. I am over 18 years of age and I make this affidavit in connection with the settlement of this action and in connection with the settlement of Schnall, et al. v. The City of New York, Department of Buildings, et al. (Kings County Index No. 506129/2017) and Schnall v. New York City Department of Buildings (Kings County Index No. 504474/2018).

2. There are no outstanding bills, liens, or charges due and owing against plaintiff to the City of New York or to the New York City Department of Finance.


SCOTT SCHNALL, P.E.

Sworn to before me this
30th day of October 2018.

BRET BOYDELL THEIS
Notary Public, State of New York
No. 02TH6266132
NOTARY PUBLIC, Qualified in New York County
Commission Expires July 23, 2020